

Memorandum

To : Honorable Carole Migden, Chairwoman
Honorable Claude Parrish, Vice-Chairman
Honorable Bill Leonard
Honorable John Chiang
Honorable Steve Westly

Date: June 18, 2003

From : Jean Ogrod
Acting Chief Counsel



Subject: **Regulation 1802**
Place of Sale and Use for Purposes of Bradley-Burns
Uniform Local Sales and Use Taxes
Referral to 15-Day File

June 25, 2003 Chief Counsel Matters Item M.4.

On November 1, 2002, the Board published proposed amendments to Regulation 1802. The amendments were intended to incorporate existing rules into subdivision (a), make a major change to subdivision (b)(5), and make clerical changes to subdivisions (b)(3) and (c). On December 18, 2002, the Board held a public hearing on the proposed amendments. As a result of written public comment received prior to the hearing and oral comment made at the hearing, the Board deleted all of the proposed changes except the change to subdivision (a)(1) and inserted the word "such" after the word "all" to clarify existing law. The Board determined that it was not making any fundamental change to the regulation and so referred the changed version to the 15-day file.

A Notice to Interested Parties was issued on January 17, 2003. As a result of oral comment, the Board, at the Rulemaking Calendar on February 6, 2003, deleted the comma after the word "state" in subdivision (a)(1). The Board concluded that the change was nonsubstantial under Office of Administrative Law (OAL) Rule 40 and adopted the regulation.

After the Rulemaking File was submitted to OAL, a controversy arose as to the purpose of the Board's amendments. Certain representatives of local taxing jurisdictions averred that the changes incorporated a new rule into the regulation regarding the local sales tax consequences if a retailer had more than one sales office in this state but only one sales office participated in the sales in question. At a discussion with interested parties and Board Member Staff, it was concluded that the adopted language had not made the Board's

intent clear. The language did not clearly indicate whether the Board had merely intended to clarify the existing rule regarding retailers with one sales office in the state or to create a new rule regarding retailers with more than one sales office in the state but only one of which participates in the sales in question. As a result, it was agreed that the Rulemaking File would be withdrawn from OAL, and the regulation would be brought back to the Board to clarify the language.

The Rulemaking File was withdrawn from OAL on June 6, 2003. The proposed changes are as follows:

1. Subdivision (a)(1)- changes adopted by the Board on February 6, 2003, deleted, and the phrase “in which that place of business participates” added to incorporate public comment requesting clarification that local sales tax revenues can only be allocated to the retailer’s in-state sales office if that office participates in the sale. This change could be inferred from the Notice and so qualifies for referral to the 15-day file as sufficiently related to the Notice of Regulatory Action. (OAL Rule 42.)

2. Subdivision (a)(2)- new subdivisions (A) and (B) designated with the current language of the subdivision moved to new subdivision (B). Sentence, “If a retailer has more than one place of business in this state but only one place of business participates in the sale, the sale occurs at that place of business” added to new subdivision (A) to incorporate long-standing rules into the regulation. This change could be inferred from the Notice and so qualifies for referral to the 15-day file as sufficiently related to the Notice of Regulatory Action. (OAL Rule 42.)

3. Reference. As decisions regarding local sales tax allocation when the retailer at issue had more than one sales office in the state are made under section 7202 rather than section 7205, citation to that section is added.

A copy of the regulation as proposed to be amended is attached for your convenience. The matter is currently set for consideration at the Chief Counsel Matters calendar on June 25, 2003. Should you need further information, please contact Assistant Chief Counsel Janice L. Thurston at (916) 324-2588 (CALNET 8-454-2588).

JO/ef

cc: Mr. Timothy W. Boyer – MIC:73
Ms. Janice L. Thurston – MIC:82
Mr. Larry D. Micheli – MIC:27
Mr. Charles Gentry – MIC:39
Mr. John L. Waid - MIC:82

Honorable Board Members

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bc: Ms. Marcy Jo Mandel (300 Capitol Mall)
Mr. Marcus Frishman

Regulation 1802. PLACE OF SALE AND USE FOR PURPOSES OF BRADLEY BURNS UNIFORM LOCAL SALES AND USE TAXES.**(a) IN GENERAL.**

(1) RETAILERS HAVING ONE PLACE OF BUSINESS. For the purposes of the Bradley-Burns Uniform Local Sales and Use Tax Law, if a retailer has only one place of business in this state, ~~which participates in the sale, all such~~ California retail sales of that retailer in which that place of business participates occur at that place of business unless the tangible personal property sold is delivered by the retailer or his or her agent to an out-of-state destination, or to a common carrier for delivery to an out-of-state destination.

(2) RETAILERS HAVING MORE THAN ONE PLACE OF BUSINESS.

(A) If a retailer has more than one place of business in this state but only one place of business participates in the sale, the sale occurs at that place of business.

(B) If a retailer has more than one place of business in this state which participate in the sale, the sale occurs at the place of business where the principal negotiations are carried on. If this place is the place where the order is taken, it is immaterial that the order must be forwarded elsewhere for acceptance, approval of credit, shipment, or billing. For the purposes of this regulation, an employee's activities will be attributed to the place of business out of which he or she works.

(3) PLACE OF PASSAGE OF TITLE IMMATERIAL. If title to the tangible personal property sold passes to the purchaser in California, it is immaterial that title passes to the purchaser at a place outside of the local taxing jurisdiction in which the retailer's place of business is located, or that the property sold is never within the local taxing jurisdiction in which the retailer's place of business is located.

(b) PLACE OF SALE IN SPECIFIC INSTANCES.

(1) VENDING MACHINE OPERATORS. The place of sale is the place at which the vending machine is located. If an operator purchases property under a resale certificate or from an out-of-state seller without payment of tax and the operator is the consumer of the property, for purposes of the use tax, the use occurs at the place where the vending machine is located.

(2) ITINERANT MERCHANTS. The place of sale with respect to sales made by sellers who have no permanent place of business and who sell from door to door for their own account shall be deemed to be in the county in which is located the seller's permanent address as shown on the seller's permit issued to him or her. If this address is in a county imposing sales and use taxes, sales tax applies with respect to all sales unless otherwise exempt. If this address is not in a county imposing sales and use taxes, he or she must collect the use tax with respect to property sold and delivered or shipped to customers located in a county imposing sales and use taxes.

(3) RETAILERS UNDER SECTION 6015. Persons regarded by the Board as retailers under Section 6015(b) of the Revenue and Taxation Code are regarded as selling tangible personal property through salespersons, representatives, peddlers, canvassers or agents who operate under or obtain the property from them. The place of sale shall be deemed to be:

(A) the business location of the retailer if the retailer has only one place of business in this state, exclusive of any door-to-door solicitations of orders, or

(B) the business location of the retailer where the principal negotiations are carried on, exclusive of any door-to-door solicitations of orders, if more than one instate place of business of the retailer participates in the sale.

The amendments to paragraph (b)(3) apply only to transactions entered into on or after July 1, 1990.

(4) AUCTIONEERS. The place of sale by an auctioneer is the place at which the auction is held. Operative July 1, 1996, auctioneers shall report local sales tax revenue to the participating jurisdiction (as defined in subdivision (c) below) in which the sales take place, with respect to auction events which result in taxable sales in an aggregate amount of \$500,000 or more.

(5) OUT-OF-STATE RETAILERS WHO MAINTAIN A STOCK OF TANGIBLE PERSONAL PROPERTY IN CALIFORNIA. Operative October 1, 1993, if an out-of-state retailer does not have a permanent place of business in this state other than a stock of tangible personal property, the place of sale is the city, county, or city and county from

which delivery or shipment is made. Local tax collected by the Board for such sales will be distributed to that city, county, or city and county.

(6) **FACTORY-BUILT SCHOOL BUILDINGS.** The place of sale or purchase of a factory-built school building (relocatable classroom) as defined in paragraph (c)(4)(B) of Regulation 1521 (18 CCR 1521), Construction Contractors, is the place of business of the retailer of the factory-built school building regardless of whether sale of the building includes installation or whether the building is placed upon a permanent foundation.

(7) **JET FUEL.**

(A) In General. The place of sale or purchase of jet fuel is the city, county, or city and county which is the point of the delivery of the jet fuel to the aircraft, if both of the following conditions are met:

1. The principal negotiations for the sale are conducted at the retailer's place of business in this state; and

2. The retailer has more than one place of business in the state.

(B) The local sales or use tax revenue derived from the sale or purchase of jet fuel under the conditions set forth in this subdivision shall be transmitted by the Board, to the city, county, or city and county where the airport is located at which such delivery occurs.

(C) Multi-Jurisdictional Airports. For the purposes of this regulation, the term "multi-jurisdictional airport" means and includes an airport that is owned or operated by a city, county, or city and county, that has enacted a state-administered local sales and use tax ordinance and as to which the owning or operating city, county, or city and county is different from the city, county, or city and county in which the airport is located. The 1.25% local tax revenue derived from sales of jet fuel at a "multi-jurisdictional airport" shall, notwithstanding Subdivision (B), be transmitted by the Board as follows:

1. In the case of the 0.25% local sales tax imposed by counties under Government Code section 29530 and Revenue and Taxation Code section 7202(a), half of the revenue to the county which owns or operates the airport (or in which the city which owns or operates the airport is located) and half to the county in which the airport is located.

2. In the case of the remaining 1% of the local sales tax imposed by counties under Revenue and Taxation Code section 7202(a), and in the case of the local sales tax imposed by cities at a rate of up to 1% and offset against the local sales tax of the county in which the city is located under Revenue and Taxation Code section 7202(h), half of the revenue to the city which owns or operates the airport and half to the city in which the airport is located. If the airport is either owned or operated by a county or is located in the unincorporated area of a county, or is owned or operated by a county and is located in the unincorporated area of a different county, the local sales tax revenue which would have been transmitted to a city under this subdivision shall be transmitted to the corresponding county.

3. Notwithstanding the rules specified in Subdivisions 1. and 2., the following special rules apply:

a. In the case of retail sales of jet fuel in which the point of the delivery of the jet fuel to the aircraft, as described in subdivision (A), is San Francisco International Airport, the Board shall transmit one-half of the local sales tax revenues derived from such sales to the City and County of San Francisco, and the other half to the County of San Mateo.

b. In the case of retail sales of jet fuel in which the point of the delivery of the jet fuel to the aircraft, as described in Subdivision (A), is Ontario International Airport, the Board shall transmit local sales taxes with respect to those sales in accordance with both of the following:

c. All of the revenues that are derived from a local sales tax imposed by the City of Ontario shall be transmitted to that city.

d. All of the revenues that are derived from a local sales tax imposed by the County of San Bernardino shall be allocated to that county.

(D) Otherwise, as provided elsewhere in this regulation.

(c) ALLOCATION OF SALES TAX AND APPLICATION OF USE TAX.

Local sales tax is allocated to the place where the sale is deemed to take place under the above rules. The local use tax ordinance of the jurisdiction where the property at issue is put to its first functional use applies to such use. As used in this subdivision, the term "participating jurisdiction" means any city, city and county, or county which has entered into a contract with the Board for administration of that entity's local sales and use tax.

APPLICATION OF USE TAX GENERALLY.

(1) When the order for the property is sent by the purchaser directly to the retailer at an out-of-state location and the property is shipped directly to the purchaser in this state from a point outside this state, the transaction is subject to the local use tax ordinance of the participating jurisdiction where the first functional use is made. Operative July 1, 1996, for transactions of \$500,000 or more, except with respect to persons who register with the Board to collect use tax under Regulation 1684(b) (18 CCR 1684), the seller shall report the local use tax revenues derived therefrom directly to such participating jurisdiction.

(2) Operative July 1, 1996, if a person who is required to report and pay use tax directly to the Board makes a purchase in the amount of \$500,000 or more, that person shall report the local use tax revenues derived therefrom to the participating jurisdiction in which the first functional use of the property is made.

The amendments to paragraph (b)(4) and new paragraph (c) shall apply prospectively only to transactions entered into on or after July 1, 1996. New paragraph (c) shall not apply to lease transactions.

Authority cited: Section 7051, Revenue and Taxation Code.

References: Sections 6012.6, 6015, 6359, 6359.45, 7202, 7204.03 and 7205, Revenue and Taxation Code.

REGULATION HISTORY

TYPE OF REGULATION: Sales and Use Tax
REGULATION: 1802
TITLE: Place of Sale and Use for the Purposes of Bradley Burns Uniform Local Sales and Use Taxes
PREPARATION: Janice Thurston/John Waid
LEGAL CONTACT: Janice Thurston/John Waid

The Sales and Use Tax Regulation 1802, Place of Sale and Use for the Purposes of Bradley Burns Uniform Local Sales and Use Taxes, is proposed to be amended to interpret, implement and make specific Revenue and Taxation Code section 7205. Amendments are proposed to (1) clarify that to be a place of sale within the meaning of section 7205, a sales office must participate in the sale; (2) correct a clerical error in an operative date; and (3) state that when sales are negotiated out of state but the property is shipped from an in-state stock of tangible personal property belonging to the retailer the local sales tax revenues derived from such sales are to be allocated directly to the location of such in-state stock of goods under defined conditions, and subject to an operative date.

REGULATION HISTORY

June 25, 2003: Placed on Chief Counsel Matters for Board's consideration of revised language.
June 6, 2003: Board withdrew the regulation from the Office of Administrative Law.
April 28, 2003: Regulation submitted to the Office of Administrative Law for approval.
February 6, 2003: Board adopted revised language to the regulation.
February 6, 2003: Regulation placed on Chief Counsel Matter for Board adoption of revised language.
January 17, 2003: 15-day comment period begins – Letter e-mailed and mailed to interested parties.
December 18, 2002: Public Hearing – Regulation referred to 15-day file.
November 1, 2002: 45 day public comment period begins.
November 1, 2002: Notice of public hearing published in California Regulatory Notice Register, Register 2002, NO. 44-Z, e-mailed and mailed to interested parties.
September 12, 2002: Board directed staff to amend regulation.